CHIA YAW CHA

v.

TAN SOON KEE & ORS. & ANOTHER CASE

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[ORIGINATING SUMMONS NO. 354 & 355 OF 1983]
19 SEPTEMBER 1983

LAND LAW: *Private caveat - Application for extension - Extension order not automatic - Court to exercise discretion in appropriate circumstances only - Caveat - Lengthy extension if granted - Effect as of a permanent injunction - Sale of land - No right to caveat established - No nexus between purchasers and registered owners as vendor of a company.*

The plaintiffs had entered into an agreement for the purchase of part of land with a company. But in the agreement for the sale of the said land, it was stated that the company itself was the purchaser of all the land comprised in the said title but the identity of the vendors was not disclosed. The plaintiffs having paid the deposit and some instalments entered a private caveat against the title to protect their interest. Subsequently the Collector of Land Revenue issued a notice to the plaintiffs in Form 19C of the National Land Code giving the plaintiffs notice of intention to remove the caveat at the expiry of one month from the date of the service of the notice or of such further period, if any, as the Court may order. The plaintiffs made an *ex-parte* application to the Court for an order that the caveats registered by them be extended for a further period of six years. However there was no averment in the Affidavits to show who the registered proprietors of the land were and the terms upon which the company was to purchase the said land.

Held:

[1] The caveatable interest of the plaintiffs had not been made out since the vital nexus between the plaintiffs and the registered owners of the land was not established.

[2] Should the Court grant an extension of such a lengthy duration it would have the effect of a permanent injunction. It is well established that injunctions would only be granted for a fixed short period to enable the other side to be heard soonest possible.

Obiter dicta

[3] An extension order under s. 326(2) of the National Land Code is not automatic and the Court would not mechanically grant orders upon application.

[4] The applicants must come to Court with appropriate materials and also give reasons in all the circumstances why it has not been possible to give due notice of their applications to the proprietor or other person who initiated the notice of intended removal of the caveat.

[5] Equity aids the diligent and not the indolent. The Court must deprecate the tendency of applicants to sleep on their rights and come to Court at the eleventh hour for extension orders for caveats about to expire in a day or two from the date of the hearing.

[Plaintiffs' application dismissed.]

Legislation referred to:
National Land Code 1965, ss. 326(1), (2)

For the plaintiffs (Ex-parte) - Abdul Razak Ahmad; M/s. Abdul Razak Ahmad & Co.

JUDGMENT

Mahadev Shankar J:

Since the salient facts of these *ex-parte* applications were very nearly identical I decided to take them together.

The plaintiff in each of these applications had entered into an agreement for the purchase of a part of the land contained in EMR No. 2470 Lot No. 1583 in the Mukim of Jeram Batu, district of Johore Bahru, hereafter referred to as the said land and the said title.

The vendor was Gelang Patah Development (M) Sdn. Bhd. hereafter referred to as the Company and the agreement was dated 3 March 1980.

But in the agreement for the sale of the said land between the Company and the plaintiffs, it is stated that the Company is itself the purchaser of all the land comprised in the said title, but the identity of the person from whom the Company was purchasing the same said land is not disclosed in the agreement between the Company and the plaintiffs.

Pursuant to the agreement the plaintiffs paid the Company a deposit followed by instalments.

To protect their interests each of the plaintiffs entered a private caveat against the said title.

Under the said agreement the Company had undertaken to apply for conversion of the land from agricultural to building and to further apply for sub-division into individual lots so that separate titles will be made available for the portions which the Company had agreed to sell the plaintiffs.

On 15 August 1983 the Collector of Land Revenue at Pontian, issued a notice to the plaintiffs in Form 19C of the National Land Code giving the plaintiffs notice of intention to remove the caveat at the expiry of one month from the date of the service of the notice or of such further period, if any, as the Court may order.

A few days later the plaintiffs were served with the notice. However, not until 13 September 1983, did the plaintiffs file an application for an order that the caveats registered by them be extended for a further period of six years and for other consequential orders.

The affidavit in support of this application was inadequate in a number of respects.

In the first place there was no averment anywhere in the affidavits to show who the registered proprietor of the said land was either on the date that the plaintiffs entered into their agreement with the Company or for that matter on any other relevant date.

Furthermore the terms upon which the Company was to purchase the said land was not disclosed.

Consequently the Court was unable to come to any positive conclusion that at the time the plaintiffs entered their caveats they were entitled to do so. Of course, if the Company was the registered proprietor at that point in time the plaintiffs would have been entitled to enter their caveats. But the glaring omission in the plaintiffs' affidavit in this respect left the Court with no option but to hold that the caveatable interest of the plaintiffs had not been made out since the vital nexus between the plaintiffs and the registered owners of the land was plainly missing.

The plaintiffs each pray nevertheless for an extension of their caveats for six years. No authority whatsoever was cited for an extension of such a lengthy duration. There is also no statement anywhere in the affidavit in support, that the plaintiffs intended to file some

action against the registered proprietor. On the assumption that the applicants were otherwise entitled to enter a caveat such an order, had the Court been disposed to grant it, would have had the effect of a permanent injunction: all this on an *ex-parte* application where it is well established that injunctions would only be granted for a fixed short period to enable the other side to be heard soonest possible.

Finally it is noted that the defendants named in these Originating Summons is not a Company but 4 individuals. These individuals are described in Form 19C issued by the Collectors as the proprietors of the land.

Nowhere in the affidavit is there any statement clarifying what connection these defendants had with the plaintiffs except that they as proprietors of the land had required the Registrar to exercise his powers under s. 326(1) of the National Land Code.

In these circumstances, the Court was left with no alternative but to dismiss these applications.

It will be pertinent here to make some further observations on this matter particularly in the light of the spate of *ex-parte* applications which the Court has received in the past few weeks for extension orders under s. 326(1) of the National Land Code.

Let it once again be stated that equity aids the diligent and not the indolent. The Court must deprecate the tendency of applicants to sleep on their rights and come to Court at the eleventh hour for extension orders for caveats about to expire in a day or two from the date of the hearing.

Let it also be known that an extension order under s. 326(2) is not automatic and the Court is not a rubber stamp which would mechanically grant orders immediately after the applicant has knocked at its doors.

Section 326(2) of the National Land Code means what it says. The Court may on application and from time to time extend the period but where the application is made *ex-parte* it will only make the order if the circumstances require.

These words must mean, not only that the applicant must come to Court with appropriate materials but also give reasons in all the circumstances why it has not been possible to give due notice of their applications to the proprietor or other person who initiated the notice of intended removal of the caveat.

Also found at [1983] 2 CLJ 260